IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1290 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

KUMBHAR CHANDULAL GOKALDAS

Appearance:

1. Criminal Appeal No. 1290 of 1986

MR K P Rawal, APP for Petitioner No. 1

MR Pravin Gondalia for Mr YOGESH S LAKHANI for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 09/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.P.BUCH)

The State of Gujarat has preferred this acquittal

appeal against the judgment and acquittal order dated 13.6.1986 recorded by the learned Addl.Sessions Judge, Junagadh at Porbandar in Sessions Case No.6/85 under which the learned trial Judge was pleased to acquit the present respondents from offences punishable under section 302 read with section 114 of IPC as well as under section 37(1) read with section 135 of the Bombay Police Act. The facts of the case of the prosecution before the trial court may be briefly stated as follows:

2. The present two respondents are father and son. The deceased was serving as a Headmaster in Taluka School, No.1, Kutiyana in Porbandar revenue district. It seems that the first respondent being the son was unemployed and therefore, the second respondent had requested the deceased to see that the first respondent gets an employment. However, nothing happened and, therefore, as per the case of the prosecution, on 9.11.1984 at evening hours, the deceased was going on a public road at Kutiayana. At that time, at about 6.45 p.m. two respondents met him on the road and out of them, the second respondent told the deceased that he had not made any effort to provide an employment to the first respondent and, therefore, he would be done to death. That in the process, second respondent caught hold of the deceased from his back and the first respondent dealt a knife blow on the abdomen of the deceased. The deceased sustained grievous hurt and he was taken to his residence by his peon Bhikubhai and from there the deceased was taken to Kutiayana dispensary. His condition was not good and, therefore, he was shifted to Porbandar and to Jamnagar and from Jamnagar he was brought to Ahmedabad. In the process, the deceased died. Initially offence punishable under section 326 of IPC was registered against the present two respondents. However, since the deceased died, offence under section 302 of IPC was registered against the respondents and the two respondents were arrested, investigation was undertaken and at the close of the investigation, the respondents were charge sheeted before the trial court for offence under section 302 which was exclusively triable by a Court of Sessions and there the case against the respondents was ordered to be committed to the Court of Sessions and therefore, it was registered as Sessions Case No.6/85. The respondents were provided with copies of police investigation papers. Charge was prepared and framed against the present respondents at Exh.3. It was read over and explained to both the respondents. Both had pleaded not guilty and, therefore, they were tried before the trial court and at the end of the trial, learned trial Judge recorded further statement of the

respondents and after hearing, the trial court found that the prosecution has not established their case and, therefore, the respondents were acquitted.

2. Feeling aggrieved by the judgment and acquittal order passed by the trial court, the State has preferred this acquittal appeal before this Court under section 378 of the Code. It has been mainly contended here that there was sufficient material on record to convict the respondents for the aforesaid offence. That the trial court has omitted to consider the consistent dying declarations of the deceased given before different persons and authorities. That even the dying declaration recorded by the Executive Magistrate has also not been considered by the trial court. Though the deceased himself had filed FIR, it has not been exhibited and it has not been admitted in evidence. That it has also not been considered as dying declaration. That the trial court has not assigned any reason for not accepting the above material on record. That therefore, the judgment is really not a judgment and simply there is narration of evidence of the prosecution. That when the judgment shows findings of acquittal without assigning any reason, the judgment is ex-facie illegal and deserves to be set aside.

3. The State has, therefore, contended that the present appeal be allowed, the judgment and acquittal order be set aside and the respondents be convicted for the aforesaid offence.

4. At the stage of admission, the appeal was admitted and bailable warrants were issued in a sum of Rupees Two thousand against the respondents. When the matter was fixed for final hearing, we have heard Mr K P Rawal, learned APP for the State and Mr Pravin Gondalia, for Mr Y S Lakhani, learned Advocate for the respondents. Incidentally, both of them have taken us through the evidence on record. They have also taken us through the judgment of the trial court.

5. During the course of the argument, learned APP has drawn our attention to several paragraphs of the judgment. It may be stated here that the reasonings start from par 11 of the judgment. There the trial court has made a reference to the evidence of -

a. para 11 - Peon-Bhikubhai Keshubhai at Exh.26.
b. para 12 - Vallabhgar Parbatgar at Exh.27
c. para 13 - Milap Mohanlal Exh. 28
d. para 14 - Samant Manda Exh.31

e. para 15 - Dr.Abdul Gafar Vali Mohd. Exh.35
f. para 16 - Dr.Jamnadas Narsibhai
g. para 17 - Head Constable Jagnnath Govinda
h. para 18 - Naranbhai Tidabhai
i. para 19 - Laduben Bavanbhai, widow of the deceased
j. para 20 - Kumarpal Ghanshyam Zala
k. para 21 - Alabhai Vejabhai, PSI
l. para 22 - Gokhannath Chaturvedi, Head Constable
m. para 23 - Jadeja, P.I.

Then it has been observed by the trial court in the paragraph 23 itself that on account of the aforesaid appreciation of evidence, as per the opinion of the court, the State has failed to prove the case against the accused beyond any doubt and, therefore, the accused deserve acquittal.

6. Mr K P Rawal, learned APP has argued at length that the trial court has simply narrated the evidence of witnesses but has not discussed the same. He stated during the course of his argument that the trial court has not even observed as to whether or not it was inclined to accept the evidence tendered by the witnesses of the prosecution. In short, reasons have not been given by the trial court for accepting or rejecting the evidence tendered by the prosecution. It is also argued by Mr Rawal that the trial court has ignored to consider the FIR filed by the deceased himself. He has also argued that the said FIR has been marked as 'A' but it has not been admitted in evidence. He has further argued that the trial court has not discussed the evidentiary value of the said FIR lodged by the deceased before the police station officer. Even evidence of Laduben has been narrated but it has not been discussed or considered by the trial court. He has further argued that the trial court has not even stated in the judgment as to whether the trial court has accepted the version of Laduben to be true or not. Mr Rawal has further argued that as per the prosecution case, the first respondent was found with knife by the Police Inspector Mr Zala of Porbandar police station who was simply on patrolling duty. Though according to the evidence of the said Police Inspector the first respondent was found with a knife on the late evening on the date of offence, the said fact has not been taken into consideration and has not been discussed by the trial court, during the course of the judgment. He has further argued that as per the evidence of the said Police Officer, the respondent had made an admission of his guilt before him at Porbandar and therefore, he was taken to Kutiyana and was handed over to Kutiyana

police station with muddamal knife and this fact has also not been considered by the trial court. It is also not the say of the trial court that the above evidence is not acceptable. The fact remains that the trial court has not discussed a word regarding the evidence to any extent.

7. On going through the judgment, it is clear that the trial court has merely narrated the evidence tendered by the prosecution. However, the trial court has not discussed the evidence and reasons have not been assigned for accepting or discarding the said evidence. Reasons are required to be assigned for accepting or not accepting the evidence. Without assigning reasons, it would not be possible even for the purpose of deciding as to what to do in the matter. Mr Rawal has argued here that it is not possible for the State to challenge the findings of the trial court since the findings are not supported by any reasons.

8. On the other hand, Mr Pravin Gondalia, learned Advocate for the respondents has drawn our attention to the further statement of the respondents recorded by the trial court under section 313 of the Code of Criminal Procedure after concluding the evidence. There we find that the trial court has put one question to the effect as to whether the respondents/accused wanted to explain the evidence recorded in their presence and hearing. The reply of both the accused respondents was that they did not want to explain. The second question was whether they wanted to say anything more. There also the respondents stated to the trial court that they did not want to say anything more but they have been falsely implicated in the matter. Then the third question was whether the respondents desired to lead defence and the answer was in negative.

9. In our view, the purpose of making provision under section 313 of the Code is to provide an opportunity to the accused persons to explain the facts and circumstances appearing in evidence against the accused. In the present case, we find that there are some pieces of evidence on record which were required to be put to the notice of the present respondents. The dying declaration recorded by the Executive Magistrate, Exh. 34, FIR filed by the deceased before the police station officer Mark 'A', oral statements said to have been made by the deceased to different witnesses etc. the fact that the first respondent was arrested with knife by P.I. Mr Zala, the fact that the deceased was in conscious state at all times, as certified by the Doctor,

the said fact stated by the Executive Magistrate are all pieces of evidence which were required to be placed to the notice of the respondents for permitting them to explain as to whether they wanted to explain the said evidence against them. On going through the further statements of the respondents, it is amply clear that the trial court has not put detailed question to the two respondents in order to provide them an opportunity to explain the circumstances appearing in evidence against them. Therefore, a valuable right of the respondents to explain the said circumstances appearing in evidence against them has been lost. The respondents have been deprived of the said valuable right. On going through the said statements, one has to agree that the said statements are not in compliance with the requirements of section 313 of the Code. Thus the circumstances appearing in evidence against the respondents have not been brought to their notice during the course of the examination of the respondents under section 313 of the said Code.

10. So on the one hand, it is clear that the trial court has not assigned any reason for accepting or not accepting the evidence of the witnesses on record, on the other hand, the trial court has not provided any opportunity to the respondents for explaining the circumstances appearing in evidence against them. In that view of the matter, we are of the opinion that this is a fit case wherein the matter be remanded to the trial court. We make it clear that whatever evidence produced by the prosecution on record will remain as evidence before the trial court and the witnesses already examined, will not be required to be examined again. However, the prosecution as well as the defence will be at liberty to produce further evidence if they so desire. If they desire to produce any evidence, naturally it will be recorded in accordance with law. If no evidence is desired to be produced by the parties, the trial court will naturally record the detailed further statements of the respondents in accordance with the spirit and substance of the provisions made in section 313 of the Code and thereafter naturally the trial court will hear the prosecution as well as defence and thereafter, the trial court will be required to pronounce judgment and while so doing, naturally, the trial court will be required to assign reasons for accepting or rejecting the evidence on record. We make it clear that we do not observe anything on merits of the case and, therefore, the trial court will be required to deal with and decide the case afresh on the present evidence and on further evidence, if any, as may be produced before it by the

parties. We therefore, agree with Mr K P Rawal, learned APP and he is right in arguing that the judgment is without any reasons and, therefore, the case may be remanded so that even the State may come to know as to the reasons for acquittal or conviction and, therefore, the State can take appropriate action on such disposal of the case.

11. We are therefore, of the view that when the judgment is without any reason and when the further statements have also not been properly recorded, it will be just and proper to remand the case back to the trial court.

12. For the foregoing reasons, the appeal is partly allowed. The judgment and acquittal order recorded by the trial court are set aside and the matter is remanded to the court of learned Addl.Sessions Judge, Junagadh at Porbandar with a direction to take up further trial. The trial court will record further statements of the respondents in accordance with the provisions of section 313 of the Code and thereafter, the trial court will decide the matter on merit after hearing the parties and the case will be finally disposed of strictly on merits in accordance with law.

13. Mr Pravin Gondalia, learned Advocate for the respondents states, at this stage, that the second respondent is aged 84 years. However, it is a matter of record that the respondents were on bail pending trial and, therefore, the trial court will continue them on bail on obtaining "fresh bail bond and P.R." Since the matter is an old one and since the second respondent is shown to be aged 84 years, the trial court will take up the matter for hearing within two weeks from the date of receipt of the Record & Proceedings from this court and shall dispose of the aforesaid Sessions Case at its original number as early as possible and preferably before the end of April, 2004.

14. Registry is directed to forthwith transmit the R & P along with copy of this order to the trial court without any delay so that this old case of an old accused may be taken up for hearing and disposal as early as possible.

The respondents accused are ordered to remain present before the trial court on 23.2.2004 for furnishing fresh bail bonds and for getting the date for proceeding further in the matter as may be fixed by the trial court.

[D K Trivedi, J.] [D P Buch, J.]

msp